G. R. S. IX-5]

Previous references. 1862

191 .

(Courts.)

File No. 2

Serial Nos. 1–4.

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1–4

~~Part~~ B for May 1862

SUBJECT.

Extent of Jurisdiction of the ~~Bangalore~~ Small Cause Court

2 dixit

W D 88—GPB—50,000—24-7-16

Mirza Nazeer Hussain

expressed,
and am of opinion that until
the Govt have sanctioned the
establishment for the Small Cause
Court so as to admit of there
being notified publicly
it cannot be authorized by the Supreme
Court suitors may with some
degree of validity allege that
they are not in a position to
know the extent of the Court's
jurisdiction. Under these
circumstances I consider
that the Jud. Comr. has
the power to entertain a
petition of appeal of this
sort the jurisdiction of
the Court is still debatable
ground, though of course any
interference on his part will
a view to guide the Court
will be exercised in such a
manner as not to lead
the Jud. Suitors to suppose
that a regular appeal from
the decisions thereof does
or in any way contemplated

D 21/5/63

1863/4 No 12

From

The Judicial Commissioner

To The Secretary.

Dated 18th May 63

Despatched 19 " "

Received 19 " "

Enclosures, No. 2

No 18

Subject.

Forwards for the information of the Commissioner Copy of letter No 2 dated 12th May 1863 from the Bangalore Court of Small Causes together with Extracts from the Petition Book in reference to the subject of the respective Jurisdictions of the Judl Commr and Bangalore Small Cause Courts.

Orders.

Cert. 19.5.63

Reply that I agree generally with the Jud. Comr in the
Nos 4 & 23 of Letter

No. 18 Mysore Jud. Commissioners Office

From

C. B. Saldanha Esqr.
Jud. Commissioner
in Mysore.

To

The Secretary
to the Commissioners
of Mysore.

Dated Bangalore the 18th July 1863

Sir,

I have the honor to forward for the perusal and information of the Commissioners a copy of a letter No. 27 to my address dated the 12th of July 1863 from the First Judge of the Bangalore Court of Small Causes together with the accompanying Extracts from the Miscellaneous Petition Book of my Office in elucidation of the particular features of the application presented to my Court by the Petitioners Rungiah and of my order endorsed

Mr Justice Ricketts, in which he was called forth the first personal expression of Mr. Ricketts's views on the subject of the respective Jurisdictions of the Judicial Commissioner's Court and of the Small Cause Court in regard to the Exercise of a discretionary power of remitting Costs.

2 It will be observed that in my Endorsement on the Petition of Ringiah no order was issued by me directing a remission of fees, but on the contrary I simply forwarded the Petition to the Judges with a view to their taking into consideration (if the facts of the case as stated by the Petitioner were correct) whether or not there were sufficient grounds for directing a remission of fees, either wholly or partially, under the Authority vested in them by Section XV of the Rules of the Court.

3 The First Judge of the Small Cause Court considering, I presume, that the above suggestion

was

was in the nature of an attempted encroachment upon the discretionary powers vested in the Judges of the Small Cause Court, has argued with reference to the same, that by English Law a Superior Court has no Jurisdiction to review the discretion exercised by a Judge of a Lower Court as regards Costs.

4 — Although I do not admit that the motions of my order on the Petition of Ringiah can be legitimately construed either into the assertion or Exercise of a right of revision of the Small Cause Courts discretionary powers as regards Costs, I nevertheless consider it advisable with reference to the Supreme Constitution of the Latter Court to join issue on the above point with Mr. Rickett solely with the object of having the question of the relative jurisdictions of the two Courts in regard to the remission or refund of fees and Costs

of

of Court established and established,
inasmuch as I am constantly receiving
petitions of appeal on this subject from
litigants, to which I am bound to give
under the Rules at present in force
such consideration as I may consider
them to be entitled to.

5 I have already pointed out
in my letter No. 441 dated 11th March
1863 the unsatisfactory nature of the
Appellate functions which have been
conferred upon the Judl. Commissioner
by virtue of the Commissioner's letter
to this Supreme Government in regard
to the Establishment of the new Court,
and I have for reasons assigned recom-
mended that no Appeal should lie
from the decision of the Judges of
the Small Causes Court but that
the latter should not only be summary
but final.

6 The instructions of this
Supreme Government however on
this subject have not yet been received

and

and it must therefore be borne in
mind that at present Regulation
XLVIII of the Bengalore Small Cause
Court is still in force, which, in ac-
cordance with the Commissioners's Spe-
cial orders on the subject provides
that "Every order and judgment of the
"Court holden under this Regulation
"shall be final and conclusive between
"the parties except in special
"cases and by express direction of the
"Highest Judicial Court, that is to
"say the Judicial Commissioners Court,
"an appeal is admitted".

7- I am not now contending
for the retention of this Regulation,
on the contrary I am more and more
impressed with the necessity of re-
scinding it, as with reference to
the peculiar constitution and sum-
mary Proceedings of the Court its
provisions can hardly be carried out
effectually, or with any advantage

to

to the interests Either of the public
or of individuals, whilst the diversion:
:ary right of Exercising, upon special
grounds, - Appellate Authority over
the Judges, which has been vested in
the Judicial Commissioners, appears
upon the circumstances to be calcu:
:lated to occasion lengthened and unn:
:necessary correspondence and to lead
perhaps to conflict of Jurisdiction -

8 Mr. Ricketts who has
always been an advocate for the en:
:tirely independent jurisdiction of
his Court appears to have mainly
based his arguments for non-interm:
:ference with the powers vested in the
Judges of that Court of imposing
and remitting Fees upon the ground
of the great inconveniences to which
the Judges would be subjected by
them being required to redress Cases
of hardship, which (at first sight)
might possibly be deemed to be
the chief end and object of the
Establishment

Establishment of all Courts of
Justice - In support of this view
of the case he has drawn a somewhat
harrowing picture, representing the
possible contingency of the Judges
of the Calcutta Small Cause Court
being distracted by applications from
six thousand clamorous pauliers urging
the hardships of their pauliecular Case
and in order still further to depict
the severity of the tax which the
redress of occasional grievances would
inflict upon the Judges, he has
deepened the shadows of the imaginary
scene, by showing the collapse of the
Court, and its effectual working so
completely paralyzed, by the whole
body of Suitors in perhaps forty to
fifty thousand Cases rushing in
upon and overwhelming the distracted
and much to be pitied Judges of the
Court with petitions performing claim
to the refund of fees -

9 I maintain however that the cases of the Judges of the Bangalore Small Cause Court and of the Calcutta Courts are not analagous relation in regard the amount of work devolving upon them or the constitution of the two Courts. There does not appear to be any immediate probability of the Judges of the Bangalore Small Cause Court being oppressed either with a superfluity of work or any great redundancy of fees, and I do not anticipate their being overwhelmed with inconvenient demands from forty to fifty thousand applicants either for the remission of the costs of Court or for any other equally distracting object. There are other features of dissimilarity more or less marked between the constitution of the two Courts which must be borne in mind, before their claim for entire independence from all control can be conceded to the Judges

of

of the Bangalore Small Causes Court.

10 In the first place, the right of Appeal has been withheld from the Suitors in the one Court, while in the other it has been distinctly allowed to them upon special grounds at the discretion and by direction of the Judicial Commissioners.

11 In the second place the Calcutta Court of Small Causes is established in the Presidency of India and at the seat of the High Court of Judicature, and the legal remedies and methods of redress for erroneous judgments or incorrect proceedings of the lower Court available to Suitors are by suing out a writ of Error or obtaining a writ of Mandamus, Prohibition or Certiorari, from the higher Court. In Bangalore on the contrary the local Courts are not amenable to the immediate jurisdiction of the High Court

of

of Judicature or of its procedure, but
are ruled by the Laws and Regulations
which are applicable to Non Regulation
Provinces, Writs of Error and the other
formalities and procedure of our
English Courts have not been intro-
duced and are inapplicable to the
Local Courts, and the legal remedy
alone available to Suitors in the Bang-
alore Small Cause Court is by
simple appeal on special grounds to
the Judl. Commissioners, who decide
and must as the Law now stands
be deemed sole Arbiters of the sufficien-
cy of those grounds of Appeal and
of the procedure to be adopted. The
Proclamation of the Commissioners
notifying for public information
the Establishment of the new Court
of Small Causes at Bangalore
distinctly specified that it was to
be established under such forms and
Regulations as might be approved
of by the Judicial Commissioners,
and it therefore appears to me that

that

that Officer and not the Judges of the Small Causes Court is the propriety to lay down and define the Rules and Procedure of the Court and to be responsible for the Exercise of his Appellate Jurisdiction.

12 In the third place there is a very great dissimilarity in Constitution between the two Courts, not only in the amount of work performed, but in the aggregate amount of fees realized. The Calcutta Court of Small Causes, to the best of my belief, is self-supporting, which the Bangalore Court most decidedly is not. This fact is not alone due to the comparative paucity of Suits adjudicated in the latter, to its limited jurisdiction or to the Expense of the necessary Establishment, but is also in a very great measure due to the fact that the Fees levied in accordance with the Commissioners instructions

fees

been fixed at half the rates levied in all other Small Cause Courts throughout the Country — The consequence undoubtedly is, that the aggregate amount of fees realized will always be small, that the Court will not be remunerative or self supporting, and that the Judges will not be likely of their own accord to remit fees even to paupers, or to acquiesce readily in any order from Superior Authority, directing upon special grounds of Appeal, the refund of costs of Court to Suitors who have established to the satisfaction of the Judge Commissioner any special case of hardship — The self supporting and remunerative character of the Calcutta Small Cause Court on the other hand I doubt not is calculated to engender a more liberal spirit in the Judges and to lead them to remedy the grievances and hardships to which misinformed Suitors are at times

liable

liable owing to the ignorance of the
jurisdiction of the Court or other
causes by occasionally unwilling fees.
It will be seen that Mr. Ricketts
has in the 3rd para of his letter care-
fully guarded himself against a
too narrow restriction of the discre-
tionary power of unwilling fees vested
in the Judge and has thereby admitted
to a certain extent the applicability
of that power under a liberal con-
struction of the Rule to cases of
hardship and grievance though he
restricts the exercise to the Judge
himself at the time of passing
judgment.

13 In the fourth place there
is a marked dissimilarity between
the cases of the two Courts in the
following respect, Viz. that the
Rules and Regulations of the Cal-
cutta Court have been fully publish-
ed and made known to the world
at large, and that no one can reason-

or legally plead ignorance thereof-
In regard to the Bungalows - Small
Cause Court the case is widely diff-
ferent - The only documents in regard
to the Jurisdiction of the Court,
which have as yet been notified for
public information consist of the
Commissioner's Proclamation of the
20th of December 1862 and of any
more detailed Notification of
the 24th of the same month - These
documents were duly notified and
published in the Local news papers
and were otherwise widely circulated
for public information - In respect
therefore to the Penal provisions of
the above Notifications as regards
the jurisdiction of the Court within
the public not any individual can
legally or legitimately plead ignorance -
With regard however to the Regulations
of the Court and the Rules of
Procedure the case is different -
The former have been duly drawn

up

ref, printed and published under
cover of my letter No. 11 dated 8th
January 1863 for the final sanction
and approval of the Supreme Go-
vernment, pending the receipt of
which no copies have been authori-
tatively sold or published, though
a few copies have been struck off
for the use of the Judges and Officers
of the Court. Under these circum-
stances the public at large must
be legitimately held Excused for
being ignorant of the Rules of
practice and Regulations of the
Court, while individual Suitors
should Concerns be dealt with
in a considerate and liberal spirit
and every opportunity should also
I consider be afforded them of
making themselves acquainted
with such of the Special restric-
tions upon the Jurisdiction of
the Court, which were not suc-
cinctly notified for public in-
formation

formation in the original Notifi-
cation — The case of the Petitioner
Ringiah is one exactly in point —
His claim was rejected by the Judges
of the Court under the provisions
of Rule XX of the unpublished Re-
gulations as being beyond the Juris-
diction of the Court on the legitimate
ground of the Special proviso con-
tained in the above Rule viz: that
"no action shall lie in the Court
"on a balance of partnership account
"unless the balance shall have been
"settled or struck by the parties or
"their agents" — As the above special
restriction on the Jurisdiction of
the Court is one which is only to
be found in the unpublished Regu-
lations of the Court and was one
which was not expressly alluded to
in the Notification of this Court
of the 24th December 1862 in the
category of Suits which were ex-
pressly excluded from the Juris-

diction

:diction of the Court I am of
opinion that the application of the
Petitioner was one which seemed
facie called for special consideration
:tion more especially as under an
misconception as to the extent of
its jurisdiction on a point on which
he had not the means of making
himself acquainted, and which it
appears the Court refused to give
him information he had paid no less
than Rupees 41-8-5 as fees while
his claim had once before been thrown
out either upon a question of Juris-
:diction or upon some point of
technicality -

14 Do resort to the arguments
which Mr Ricketts has brought
forward, I would with reference to
the quotation which he has apparently
:ly taken from Broom's Selection
of Legal maxims to the effect that
"Hard Cases it has repeatedly been

said

"said one oft by Brooke bad Law"

beg to remark that I entirely agree with him that it would be extraordinarily dangerous and mischievous to deviate from a general Rule of Law merely in consequence of there being some particular circumstances of hardship in the case, but I think that this does not hold good to the same extent in regard to simple Rules of Practice and the exercise of discretionary powers of permitting fees which cannot affect prejudicially the interests of other parties either by analogy or otherwise though it might possibly afford an inconvenient precedent. In such matters I conceive that "a frowned notation of custom is as terrible as a thing as an innovation" and that the two legal maxims "jus noscitur aegrotantem" the Law pays regard to equity and "Executio Juris non habet Injuriam" "the Law will not

"not in its Executive Capacity work
"a wrong" from both of them : axiome
of Law which may very safely be
acted upon, and that if it can be
proved that the party claiming re-
:dress has been inadvertently led
into fruitless and unnecessary Ex-
:pense in consequence of the un-
:certainty of the Law, upon a point
on which he was refused information
by the Court (as is distinctly proved
by the tenor of the first petition
presented by Ringgold to this
Court) and on which owing to the
non publication of the Regulations
of the Court, he can legitimately
plead ignorance, I am of opinion
that it is not only within the com-
:petency, but that it is the duty
of the Appellate Court to give
him such redress as may appear
to be sufficient to meet the
requirements of the case.

15 Dr. Ricketts concurs

concurs

contrary that Bail of fees and
Costs be not held to form part
of the Judgment, still the in-
:position is enforced by the practice
of the Court against which to the
best of his belief no appeal lies
either in Law or Equity - To this
view of the case I entirely object
as I maintain that it is entirely
within the competency of the Ap-
:pellate Court to go into and adju-
:dicate upon the question of Costs
and to order the remission of fees
and costs of Court when upon
a consideration of the circumstances
of the case it deems such a course
requisite or Equitable - I maintain
that the restriction which the Judge
of the Small Cause Court would
put upon the Appellate functions
of the Superior Court is not
warranted by the procedure Sta-
:tutes, and in support of this
view of the case I would merely

State

state that the Judges of the High Court at Swadiwa have ruled as recently as the 24th of last November and in confirmation of previous Rules on the subject of similar purport that a regular appeal lies for costs and costs only if cause can be shown for the interference of the Court.

16 I have deemed it right to go fully into the question in order to prevent any future uncertainty on the subject of the Extent and reality of the Appellate Authority in regard to the proceedings of the Small Cause Court which has been and is at present authoritatively vested in me. As I have before explained I do not wish to retain such Appellate control, but as long as the public are referred to this Court for redress by appeal on special grounds and I am

responsible

responsible for the due discharge
of my official functions I do
not deem to allow my authority
in the matter to become null and
void on the right of refusal a unan-
imous and decision to the parties
interested. I have further deemed
it advisable to solicit the Commis-
sioners views on the subject because
I have received several other petitions
in respect of individual cases of
hardship arising out of ignorance
as to the Jurisdiction of the Court
which under the peculiar circum-
stances arising out of the recent
Establishment of the Court and
the non publication of its Regu-
lations, I cannot but consider
to be pardonable and Excusable,
and further because I have reason
to believe from what I have heard
that the peculiarity of the Court
amongst the Mercantile Community
with which the proximities of

to

its action and the high character and ability of its Judges have so well calculated to sustain it is likely to be somewhat limited by a too rigid regard for the financial prosperity of the institution, the collection under all circumstances of the largest amount of fees practicable, and by the discrimination which is shown to remit a single Rupee of fees which have been unadvisedly paid into Court by Suitors through a pardonable ignorance or misconception of its Rules and of the limitation of its Jurisdiction—

I have the honor to be

Sir

Your most Obed^t Servant

Bangalore
18th June 1863

Chas Saunders
Jud^l Commissr

Extract from the Miscellaneous Petition Book No 1 of 1863.

No	Name of the Petitioner	Purport of the petition	Order by the Jnd Commissioner
48	Kungiah of Cantonment.	States that he sued in the Cant Court his Co-partner in a Contract, for recovery of Rs 296-6-, the Court having been abolished during the progress of the Suit, the 2nd Judge of the Court of Small Causes dismissed the suit with Costs, ordering him to bring a fresh suit in a Court of competant Jurisdiction against all the Co-partners in the Concern. Petr represents that when he asked the Judge personally whether he could bring a fresh suit in the file of the Small Cause Court that Officer told him to Consult with the Vakeels; Petr Complains that some of the Vakeels say that the Suit is Cognizable by the Judges of the	The Jnd Commissioner is not prepared to give legal advise, but he has no objection to inform the Petr that if his Claim is not for real property, but for the recovery of an Amount not exceeding 500 Rupees value on a transaction which arose in the Cant of Bangalore, he is at liberty to file his suit in the Court of Small Causes. 24-3-63. (Signed) C. B. Saunders Jnd Comr

No. 27

Bangalore Court of Small Causes.

From,

L. Ricketts Esquire

1st Judge of the Bangalore Court of S. Causes

To,

C. B. Saunders Esqre

Judicial Commissioner

in Mysore.

Dated Bangalore the 12th May 1863.

Sir,

I I have the honor to acknowledge receipt of your Official Memo No. 1062, dated 27th April 1863, forwarding a certain petition to the judges of the Small Causes Court for disposal and with a view to their taking into Consideration whether or not there are sufficient grounds for directing a remission of fees either wholly or in part, under the authority vested in the judges under section XV of the Regulations of the Court, and in reply to state as follows.—

II In the first place, I would beg respectfully to submit that generally by English law a Superior Court has no jurisdiction to review the discretion exercised by a Judge of a lower Court as regards Costs and the Madras Sudr Court has ruled almost to the same effect and this

general

general rule I submit is narrowed in the Case of the Small Cause Court (as I shall endeavour hereafter to show) to an absolute interdiction to reviewing a Small Cause Court Judge's discretionary power as regards Costs - In the year 1858, in the Calcutta Court of Small Causes upwards of 6,000 Cases were either Struck off the file or non-suited - Doubtless Some of these Cases involved particular hardships from the particular circumstances of the Case; but I feel certain if the Judges were to attempt to give effect to the supposed justice of the Plaintiffs demand [illegible] thereby unsettle the established rules of practice, and introduce laxity and uncertainity into the law they administered. "Hard Cases" it has been repeatedly declared are apt to make "bad law." To have to receive and hear 6,000 applicants urging the hardships of their particular Cases so as to bring them under a supposed discretionary power to remit fees would be a severe tax upon the Judges, and 6,000 Cases would be speedily multiplied if any redress were attempted, in as much as many more Cases would be struck out or non-suited from the Carelessness or negligence of Suitors in bringing up their Cases, when they once found out that

there was a chance of their getting fees returned to them and the evil would not stop here for, if these applica-tions were attended to, there would be nothing to prevent the whole body of Suitors in perhaps 40 to 50,000 Cases from also preferring claims to refund of fees, so that gradually the efficient working of the Court would be completely paralyzed.—

III Secondly, Section XV of the Regulation alluded to, in your Memo now under reply, gives the Judges a discretionary power to remit Costs wholly or partially to poor Suitors, but then Pauperism [illegible] would have first to be proved in due form.— In the present case Petitioner does not allege himself to be poor, (nor as far as I can see does he [illegible] for a refund of fees) and even if he did, I submit it is now too late for him to urge that plea.

The circumstances under which Cases are instituted in the Court are so varied, and the complications thereof at times are so mingled, that I am not prepared to state that Cases might not arise when the Judges might be called upon to exercise their discretion regarding the adjustment of Costs, but even in such cases the question would have to be settled at the time of passing Judgment, for after Judgment is once recorded it cannot be altered or rescinded even by the Judge himself.—

Section XLVII of the Regulations" prescribes that Costs in default of special direction shall abide the result of the action and therefore form an integral portion of the Judgment of the Court itself and as such is final and conclusive upon the Petitioner, whose sole remedy was by motion before the Court for a new trial; but the time for such motion has long since expired, and therefore I submit that any further remedy is now closed to the Petitioner.-

V. Even if fees and costs be not held to form part of the judgment still their imposition is enforced by the practice of the Court [redacted] lies either in Law or equity.-

VI. In Conclusion I beg to observe that I have thus fully entered into detail inasmuch as I believe it is my duty to explain what I conceive to be the practice and the law of Small Cause Courts, and which I hold I am bound to abide by as laid down in the Regulations and Rules.-

I have the honor to be &c"

/ Signed L. Ricketts
1st Judge of the
Bangalore Court of S. Causes.

"True Copy
Chas. Saunders

What the reply sent to the Jud. Comrs Letter No 18 of this same date will suffice to show my views on the point which gave rise to the reference D 21/5/03

From
The Judicial Commissr

To
The Secretary

Dated 18th May 1903
Despatched 19 May 1903
Received 20 May 1903

Enclosures, No.
No 20

Subject.

In continuation of letter No 18 of this date forwarding a Petition with enclosures from one Krishnamah, in relation to the alleged grounds of grievance and hardship generally complained of in reference to the extent of Jurisdiction of the Bangalore Small Cause Court.

Orders.

Comrs 19.5.03

Return the enclosures & observe that the case in question is no doubt a hard one; but

Copy sent with Letter No 23 dated 25/5/03

From Mysore Civil Commissioner's Office

C. B. Saunders Esquire
Civil Commissioner

File No. Mysore

Serial No.

To

The Secretary to the
Commissioners of Mysore

Dated Bangalore 18th May 1863

Sir

In continuation of my letter
No 18 of this day's date, and in fur-
-ther elucidation of the alleged grounds
of grievance and hardships complain-
-ed of by ~~him~~ ~~in~~ ~~his~~ petition regarde
to the uncertainty which exists in re-
-gard to the extent of jurisdiction of the
Bangalore Small Cause Court, I have
the honor to submit for the perusal and
information of the Commissioners
the accompanying Original Petition
from a female of the name of Kistna
-mah together with other Original do
-cuments as per margin and the accom
-panying copy of a letter No 295 dated
the 1st of April 1863 from the First
Judge of the Bangalore Small Cause
Court, submitting a report as to the reason

on

1 Letter addressed to Officiating Civil & Sessions Judge
1 " " Bangalore
2 Receipts from the Small Cause Court.
1 Original Petition Bond

which the case was originally brought on the File of this Court as the Court had apparently no Jurisdiction in the matter, the Defendant being a Sepoy of the 11th N.I. and amenable to the Military Court of Requests.

2 A perusal of the enclosed original proceedings will convince the Commissioner that the case is one of considerable hardship. The Plaintiff Kistinamah - widow a Rice dealer of the Late 48th Madras Native Infantry, sent Private Ramaswamy of the same corps a sum which together with interest accruing thereon is said to [illegible] on the 13th February 1863. Upon the disbandment of the 48th N.I the Defendant Private Ramaswamy was transferred to the 11th N.I.

3 In order to bring her claim before the Military Court of Requests the petitioner procured a stamp paper of 4 Rupees value from the Madras Stamp Office and presented her claim to the Acting Brigade Major. An order was endorsed upon the back of the petition by that Officer transferring the complaint for investigation to the Officer Commanding

the

the 14th Regiment N.I on the ground that the Plaintiff, not being a Registered Bazaar Woman, the case could not appear before the Court of Requests.-

On receipt of this Endorsement the Officer Commanding the 14th Native Infantry wrote beneath the above the following words "Dismissed if not (being) within my Jurisdiction."

4 It appears that the applicant was referred to the Civil Courts for redress- On applying to the Judges of the Small Cause Court the Petitioner was informed that before her claim could be entertained it would be necessary for her to get the original plaint paper bond executed by the Defendant, duly stamped

5 With this order the Plaintiff almost complied and having paid the authorized penalty of fifteen times the value of the Original Stamp, amounting to Rupees 7-8-. the bond was duly stamped.

6 Having presented the stamped bond and having paid Commission Fees, Costs of Summons and of a Subpœna amounting in the aggregate to Rs 5-0-0

The

the claim was duly registered and a summons issued against Ramaswamy Privates of the 14th N.I.

7 The result as might have been expected appears to have been that the Defendant being a Sepoy of a Regiment at that Station did not put in an appearance and that the claim of the Plaintiff was eventually rejected – a further application made to the Commanding Officer of the Regiment proved equally unavailing and the widowed Plaintiff learnt to her chagrin that after having expended Rupees 16 – 8 – 6 in fees and Costs in the hope of obtaining payment, she was utterly unable to obtain redress either from the Military or the Civil Courts and that her chance of recovering her debt of Rupees 60 – 8 – was just as remote as ever or more so, as all the Courts were closed against her.

8 Had the 48th N.I not been disbanded, the Plaintiff as being attached to that Regiment would have had no difficulty in recovering her claim.

9 The case is certainly one of hardship more especially as I am aware from information which I have obtained

obtained Extra judicially that the particulars of the claim were known to the Judge of the Small Cause Court before the Summons was taken out. The claim was admitted I have reason to believe with the best intention in the world in order to try as it were experimentally the question of Jurisdiction in the matter.

10 I deferred passing final orders in the matter until I had had an opportunity of personally consulting with the Judges of the Small Cause Court on the subject, but with reference to the tenor of Mr. Pickett's letter herewith

[illegible] dated 12th May 1863 forwarded under cover of my other letter of this days date. As I consider it advisable to forward the whole of the Enclosures for the information of the Commissioner and to defer passing orders thereon until the receipt of a reply to my letter above referred to.

11 I think it right in connection to state that I am decidedly of opinion that the case under report is one worthy of favorable Consideration and that while it may be very questionable how far the Plaintiff

under

under the circumstances entitled to
in rather merits a refund of the Stamp
penalty inasmuch as the latter
was realized by way of punishment
on account of her having evaded
payment of the original stamps
due on the execution of the bond I
consider that no possible harm could
accrue from the remission of the Costs
of Courts incurred by her but on the
contrary that such a concession to
her would be but Equitable and fair
I have to request the favor of your
returning the Original Enclosures.

I have the honor to be
Sir
Your Most Obedient Servant

Bangalore
18th May
1863

Charles Saunders
Judicial Commissioner

C. S.
ca

No 295 Bangalore Court of S. Causes

From

L. Ricketts Esquire
1st Judge of the Bangalore Court
of S. Causes.

To

C. B. Saunders Esquire
Judicial Commissioner
in Mysore

Dated Bangalore 1st April 1863

Sir,

I have the honor to acknowledge re=
=ceipt of your official Memo No 522, dated 18th
March 1863, calling for a report as to the reasons
on the file of this Court inasmuch as the Court
apparently had no jurisdiction in the matter,
the Defendant being a sepoy amenable to the
Military Court of Requests; and in reply, to make
the following observations.

2 The question of jurisdiction is perhaps
one of the most Knotty points connected with the
practice of the Court, and one which for obvious
reasons it would not be advisable to have decided
irregularly and extra judicially by the officials
who are entrusted with the issuing of Summons
and other process, and thus bringing the case
on the Court files. The deciding upon such

points is the duty of the Judges when the case is brought before them at the hearing, and not before; and for the purpose of having such authoritative and judicial decision it is to be presumed that suitors bring their cases.

In the case now under report (assuming that it was the summons writers duty, and which I submit it cannot be, to decide whether he should issue a summons or not upon the Plaintiffs requisition) he would have to enquire whether the sepoy was in actual service, or pensioned, he would then have to read the document on which it was proposed to sue, or get some other writer to do so, if the language was foreign to him, by a Court of Requests, or one coming under the exceptions which takes the case out of a Military Courts jurisdiction, and brings it within the jurisdiction of this Court. After making this preliminary enquiry to the detriment of other suitors waiting to take out summonses, the writer determines the Court has no jurisdiction, refuses to issue the summons, and then goes on to the next case, when he perhaps may have to ask whether the defendants reside in the Pettah, or out of the limits of the Cantonment, whether they now dwell in the Cantonment, or did so dwell when the cause of action arose, or within six months before the time of bringing the action for

causes of action which arose within 6 months. in
fact he would have to arbiter upon all matters
of jurisdiction which it is the province of the
judge alone to decide upon, but assuming tha
with the Clerk's assistance the writer was able to
make all the necessary enquiries without
delaying other suitors, and which, I submit
he could not do, the rejected suitors or at least
some of them would certainly not be content
to abide by his decisions, and would bring
the matter to the notice of the Judges, who mus
either have the Clerk and writer before them
and go over the same enquiry themselves
and decide whether they were wrong or not,

that form, and direct the parties to take
out a Summons or not as they pleased. The
latter alternative is I submit, the only one
open to the Judges, and if so the Writers previous
labor would be all in vain.

4 When the Court comes to have more
work it will tax the energies of the establish-
ment to conduct the current business, without
having to decide upon cases of jurisdiction,
for even in the case now under report that the
Court had not jurisdiction was not self appa-
rent, and the principle of preliminary en-
quiry if conceded in one case must be, ...

ided

ceded in, all Cases of individual hardship must arise in the best of regulated schemes, but I respectfully submit it is the duty of the Public to make themselves at least acquainted with the Court's jurisdiction clause, and that it is not advisable to encourage them to remain in ignorance of it by allowing the plea of ignorance and which is contrary to one of the fundamental maxims of Law.

5 The enclosures that accompanied your Memo: now under report are herewith returned.

I have &c
(Signed) L. Ricketts
Commissioner of Requests, Bangalore
Court of Small Causes.

"True Copy"

Chas V Saunders
Jud: Commissioner

1803 No 426.
Judl 12.

Yo,

The Judl Commrs.
in Inyeme

Datid
Desp } 23 May.

Genl No 426
Judicial 12.

States in reply to letter
No 1804 the 18th Inst that
he agrees with him Generally
in the views expressed with
regard to the Regulations
to be admitted for the
Small Cause Court

Copy

m 9th 4 Dy 23rd Instt

Genl N° 426
Judicial 12 } 1863/64.

Mysore Commr's Office

To The Judicial Commr. in Mysore.

Sir,

I have the honor, by desire of the Commr to state in reply to your letter N°. 18 of the 18th Inst. that he agrees with you generally in the views therein expressed, and is of opinion that until the Govt. of India have sanctioned the regulations for the Small Cause Court so as to admit of their being notified publicly as having been authorized by the Govt. of India, Suitors may with some degree of validity allege that they are not in a position to know the extent of the Court's Jurisdiction. Under these circumstances the Commr. considers that you have full power to entertain a question

D 22/5/63

a refund of fees while the
jurisdiction of the Small
Cause Court is still debateable
ground, though of course
any interference on your
part with a view to guide
the Court will be exercised
in such a manner as not
to lead the Suitors to
suppose that a regular
appeal from the decisions
themselves is in any way
contemplated.

I have &c.

Secretary

Bangalore
23rd May 1863

Genl. No 427 } 1863/64.
Judicial 13

Mysore Commr's Office

To The Judicial Commr. in Mysore.

Section
File No
Serial No

Sir,

In returning herewith the original enclosures received with your letter No 20 of the 18th Inst: I am desired by the Commr. to state that the case in question is no doubt a hard one, but ~~my~~ reply No 12 of Justice to your No 18 of the 18th Inst. will suffice to show his ~~the Commr's~~ views on the point which gave rise to your present reference.

Bangalore
23d May 1863.

I have &c.

HH
Secretary.

1863. No 427.
Jud. 13

To
The Jud. Comr.
Cheyenne.

Dated 23d May
Desp. 15th

Genl No. 427
Judicial 13.

In returning the enclosure rec. with his letter No. 20 of the 18th Inst. states that the reply to No. 18 of the 18th Inst. will suffice to show his views on the subject referred to.

Copy sent to Gov. Cheyenne 27th May 1863

W. 529 23d Inst.